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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/617,923

07/11/2003

Roy Phillip Demott

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7590

04/25/2006

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/617,923

Applicant(s)

DEMOTT ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,10-20,23,26-40,42 and 44-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,10-20,23,26-40,42 and 44-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed March 3, 2006, has been entered. Claims 1, 3-6, 8, 10-20, 23, 26, 27, 31-33, 35, 36, 42, 44, and 49 have been amended as requested. claims 7, 9, 21, 22, 24, 25, 41, and 43 have been cancelled. Thus, the pending claims are 1-6, 8, 10-20, 23, 26-40, 42, and 44-51.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 8 and 42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not provide support for a second binder material used in conjunction with the first latex binder material as is presently claimed. In particular, the specification teaches the use of the second binder (i.e., binder fibers of low melt polyethylene or bicomponent polyester) is an alternative to the latex binder (sections [0028] and [0029]). Therefore, claims 8 and 42 are rejected as containing new matter.

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4. Claims 26 and 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not provide support for a polyester adhesive having a melting point of about 200 °F or greater. While the specification teaches polyester adhesives having a B&R melting point of about 268 °F and a DSC melting point of about 240 °F, the specification does not teach a melting point of “about 200 °F or greater” as is presently claimed.

5. [Note the originally filed claims recited a melting point of “greater than about 200 °F.” However, said claims still contain new matter in that the two phrases are not necessarily the same. The original melting point recitation does not necessarily include the endpoint of 200, while the newly amended recitation does. Additionally, the similar amendment to the film thickness in claim 18 is not considered new matter since the specification as originally filed teaches a thickness of “less than about 10 mils.” Hence, the specification teaches a thickness of “less than about 5 mils” and “about 5 mils or less.”]

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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7. Claims 1-6, 8, 9-16, 18-20, 26, 35-40, 42, and 44-50 stand rejected under 35 USC 103(a) as being unpatentable over US 6,492,001 issued to Rubin et al. in view of US 5,672,222 issued to Eschenbach for the reasons of record.

Applicant has amended independent claim 1 to include an acrylic latex binder material applied to the second side of the nonwoven needled layer. As noted in the first Office Action (01/13/05), Rubin is silent with respect to the construction of the nonwoven fabric. However, Eschenbach discloses needledpunched nonwoven fabric having binder fibers, such as low melt polyethylene or low melt nylon, and latex backcoats to bind the nonwoven fabric (abstract, col. 2, lines 49-55, col. 3, lines 20-25 and 56-62). With respect to the latex backcoat, Eschenbach only exemplifies a styrene-butadiene (SBR) latex (col. 3, line 35). However, applicant is hereby given Official Notice that acrylic latexes are well known in the art. As such, it would have readily obvious to one skilled in the art to employ an acrylic latex for the SBR latex of Eschenbach since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Thus, the amendment to claim 1 is insufficient to overcome the standing rejection.

Regarding claim 35, which limits the binder to only being applied to the second side of the nonwoven fabric, it is reiterated that the latex of Eschenbach is a "backcoat" (i.e., applied only to one side thereof) (col. 2, lines 49-55).

8. Claims 17, 23, 27-34, and 51 are rejected under 35 USC 103(a) as being unpatentable over US 6,492,001 issued to Rubin et al. in view of US 5,672,222 issued to Eschenbach and in further view of US 2004/0058603 issued to Hayes for the reasons of record.

Independent claim 32 has been amended in a manner analogous to that of claim 1. as such, the reasoning presented above for the rejection of claim 1 is also applicable here.

With respect to independent claim 27, applicant has only amended the claim to limit at least a portion of the polymeric fibers of the nonwoven to having a flame retardant material. However, this feature was previously addressed with respect to claim 12. Specifically, it was argued that textiles commonly employed for at least garments and upholstery require flame retardant materials due to federal government standards. Hence, it is readily obvious to one skilled in the art to incorporate flame retardant materials into a fabric employed for these purposes. Specifically, applicant is given Official Notice that it is well known in the art to employ flame retardant fibers in textile fabrics. Such flame retardant fibers include those that are inherently flame resistant and those that have been treated with flame retardant compositions, such as phosphorus and bromide compounds. As such, it would have been readily obvious to employ flame retardant fibers in the nonwoven fabric. Additionally, it would have been obvious to one skilled in the art to select an appropriate amount of flame retardant to meet the government standards. Therefore, the rejection stands.

Response to Arguments

9. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

10. Applicant traverses the rejections of claims 1 and 32 by asserting that the latex treatment composition of Rubin uses crosslinking agents and applies said composition to both sides of the fabric "equally well" (Amendment, paragraph spanning pages 8-9). As such, applicant asserts

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one skilled in the art “would have expected these “crosslinking agents” to negatively impact the characteristics of the pile surface by binding a portion of the adjacent pile fibers together”

(Amendment, paragraph spanning pages 8-9). The examiner respectfully disagrees since Rubin explicitly teaches the treated fabric has the same hand, feel, texture, and drape of the untreated fabric. Hence, one skilled in the art would understand the coating does not negatively impact the fabrics. Even though Rubin does not exemplify pile fabrics, without evidence to the contrary, one skilled in the art would understand the teaching that the fabrics have the same hand, feel, texture, and drape would also apply to pile fabrics. There is no evidence to the contrary.

Applicant’s arguments cannot take the place of evidence. Additionally, it is noted that the presently claimed latex binder is taught by the Eschenbach reference rather than the Rubin reference’s teaching of a latex treatment.

11. Regarding claim 35 applicant reiterates that Rubin teaches applying the latex treatment to the fabric evenly (Amendment, page 9, 1st paragraph). Applicant also argues that the combination of references is improper since the suggested modification of Rubin (i.e., apply to only one side of the fabric) would change one of the express principles of operation (Amendment, page 9, 2nd paragraph). These arguments are unpersuasive since the claimed latex binder is taught by Eschenbach and not necessarily Rubin. Note Eschenbach explicitly teaches a latex backcoat (i.e., applied to only one side).

12. With regard to independent claim 27, applicant merely asserts “None of the cited references appear to teach or suggest a nonwoven material comprising polyester or polypropylene staple fibers, at least a portion of which contain a flame retardant material.” (Amendment, paragraph spanning pages 9-10). As explained above, it is readily known in the art

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to employ flame retardant fibers in textiles. As such, claim 27 stands rejected as being obvious over the prior art for the reasons of record.

Conclusion


13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER